

## **FACTSHEET**

**TITLE:** CHANGE OF ZONE NO. 3268, GARNER INDUSTRIES FINAL PLANNED UNIT DEVELOPMENT, from I-2 to I-2 PUD, requested by Gary Bredehoft of Olsson Associates on behalf of Garner Industries, to develop up to 150,000 sq. ft. of floor area for industrial buildings, on property generally located at North 98<sup>th</sup> Street & Cornhusker Highway (Hwy 6).

**STAFF RECOMMENDATION:** Conditional Approval.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 08/09/00  
Administrative Action: 08/09/00

**RECOMMENDATION:** Conditional approval, with amendments (8-1: Duvall, Schwinn, Carlson, Steward, Taylor, Krieser, Hunter and Bayer voting 'yes'; Newman voting 'no').

### **FINDINGS OF FACT:**

1. The Planning staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.5-7, concluding that the zoning is in place and the Planned Unit Development for this parcel provides the mechanism to have review and conditions for such issues as required street improvements, floodplain storage and entryway/image design review and landscaping. The conditions of approval are set forth on p.7-10. The comments from other city/county departments are found on p.064-074. The applicant's Traffic Impact Analysis is found on p.047-063.
2. As supporting documentation and for information purposes, the minutes of the Planning Commission on the previous Comprehensive Plan Amendment and Change of Zone No. 3236 from AG to I-2 in April, 2000, are found on p.17-20; the minutes of the City Council on the previous Comprehensive Plan Amendment and Change of Zone No. 3236 are found on p.021-023; and a copy of the Restrictive Covenants which were executed and filed of record pursuant to the change of zone from AG to I-2 are found on p.024-027.
3. The minutes of the public hearing and administrative action before the Planning Commission on this final PUD are found on p.11-16.
4. The applicant's presentation and testimony is found on p.11-12 and 13-14, including requests to amend the conditions of approval to which the staff had no objection. The applicant indicated that Condition #1.1.14 requiring a drainage study and Condition #1.1.15 dealing with county road standards would be appealed as this application proceeds to the City Council. The applicant will be working with the City and the County Engineer with regard to these conditions in the interim.
5. There was no testimony in opposition.
6. Condition #1.1.18 concerning "no net loss of flood storage", which the applicant requested be deleted, generated considerable discussion and debate; however, based upon the testimony of the applicant, the Planning staff, the engineer with Olsson Associates and the Director of Planning, it was determined that this application meets the requirements of the restrictive covenants and any adopted standards regarding floodplain. (See Minutes, p.11-16)
7. On August 9, 2000, the Planning Commission voted 9-0 to agree with the Planning staff recommendation of conditional approval, with the amendments requested by the applicant except that Condition #1.1.18 was not deleted (See Minutes, p.14-15).
8. Upon reconsideration, on August 9, 2000, the Planning Commission voted 8-1 to agree with the Planning staff recommendation of conditional approval, with amendment deleting Condition #1.1.18 and moving Conditions #3.3 and #3.4 to a separate section to be completed prior to receiving occupancy permits. (Commissioner Newman dissenting). (See Minutes, p.15-16).
9. The Site Specific conditions of approval required to be completed prior to scheduling this item on the Council agenda have been submitted by the applicant and approved by the reviewing departments, **EXCEPT** that the applicant has appealed Condition #1.1.14, #1.1.15 and #3.6 (See p.109).
10. The Hydrologic and Hydraulic Evaluations were submitted by the applicant on 08/15/00, and are found on p.075-108.

**FACTSHEET PREPARED BY:** Jean L. Walker

**REVIEWED BY:** \_\_\_\_\_

**REFERENCE NUMBER:** FS\CC\FSCZ3268

**DATE:** August 21, 2000

**DATE:** August 21, 2000

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**P.A.S.:** Change of Zone #3268, Garner Industries F.P.U.D. **DATE:** July 26, 2000  
 (\*\* As revised by Planning Commission upon reconsideration, 08/09/00 \*\*)

**PROPOSAL:** A change from I-2 to I-2 PUD, to develop up to 150,000 square feet of floor area for industrial buildings.

**GENERAL INFORMATION:**

**APPLICANT:** Gary Bredehoft, for Garner Industries  
Olsson and Associates  
1111 Lincoln Mall  
Lincoln, NE 68508

**CONTACT:** Gary L. Bredehoft  
Olsson Associates  
1111 Lincoln Mall  
Lincoln, NE 68508  
402-474-6311

**OWNER:** Philip S. Mullin  
Garner Industries  
4200 No. 48<sup>th</sup> Street  
Lincoln, NE 68504

**LOCATION:** N. 98<sup>th</sup> Street & Cornhusker Highway(HWY 6)

**REQUESTED ACTION:** Approval of Final Planned Unit Development

**PURPOSE:** To develop up to 150,000 square feet of industrial buildings

**LEGAL DESCRIPTION:** A portion of Lot 2, Patterson Estates, located in the Northeast quarter of Section 35, Township 11 North, Range 7 East of the 6<sup>th</sup> P. M., Lancaster County, Nebraska. (more particularly described on the attached sheet)

**SIZE:** 22.83 acres of I-2 (30.37 acres in the total parcel)

**EXISTING ZONING:** I-2 (and AG)

**EXISTING LAND USE:** Farming

## **SURROUNDING LAND USE AND ZONING:**

Agricultural land zoned AG Agricultural to the north; vacant land zoned I-2 Industrial Park to the northeast; AG zoning, agricultural uses and three residences to the south; agricultural land zoned AG and commercial uses zoned I-1 Industrial to the southwest.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

The Land Use Plan shows the area as Industrial.

## **HISTORY:**

During the 1979 Zoning Update the site was converted from AA Rural and Public Use to AG Agriculture.

On April 24, 2000 the City Council approved a Change of Zone from AG to I-2 and a Comprehensive Plan Amendment to show this area as Industrial. As part of that approval the following provision was included;

*The recommendation of approval is based on the following understanding that the Garner Industries Final PUD will provide for the following:*

1. *Further revision of the landscaping, building facade and design standards for this site acceptable to the City or as required by the City's Entryway Design Standards, if they are developed and approved;*
2. *A grading plan to meet "No Loss of Flood Storage" standards in the mapped and unmapped 100 year floodplain;*
3. *Provisions for wetlands restoration and creation in the entire floodway and the relocated drainageway;*
4. *Provisions for on site water and sewer service that is acceptable to the Lincoln/ Lancaster County Health Department;*
5. *Retaining the AG zoning over the entire floodway area;*
6. *Dedication of 50 feet of right-of-way from centerline;*
7. *A front yard setback of 60 feet measured from the new right-of-way line;*
8. *A traffic study and centerline profile acceptable to the County Engineer and Public Works and Utilities Departments;*
9. *Agreement to provide for paving and transportation improvements subject to approval of the Public Works and Utilities Department and the County Engineer;*
10. *Development will meet the City's stormwater standards;*
11. *The Garner entrance at least 800 feet from the centerline of Cornhusker Highway at a location to be approved by the Public Works and Utilities Department and County Engineer, and;*
12. *Garner will be annexed if water and sewer service becomes available in this area at some time in the future.*

Covenants were filed on this property reflecting the above listed conditions. The covenants will be released with the approval and filing of this PUD.

## **SPECIFIC INFORMATION:**

### **UTILITIES:**

Garner is proposing to provide their own well and septic system on site.

The City water transmission main in Cornhusker Highway was not designed to provide local service. Additional water mains would be necessary to provide adequate water pressure for this area. The existing small private sewer line that serves Novartis, to the east of this property, does not have capacity to serve additional businesses.

### **TOPOGRAPHY:**

Generally flat with two high points where the building and wells are proposed to be sited.

### **TRAFFIC ANALYSIS:**

This property abuts, but does not have direct access to, Cornhusker Highway , a four lane divided state highway. 98<sup>th</sup> Street and Alvo Road are county gravel roads.

98<sup>th</sup> Street is not perpendicular to Cornhusker Highway. In general, intersections of major roadways should be perpendicular (90 degree angle) to provide for visibility and safety concerns. If 98<sup>th</sup> Street were realigned to provide a 90 degree intersection with Cornhusker Highway this may impact this intersection and the Garner property.

Alvo Road intersects with 98<sup>th</sup> Street within 100 feet of the intersection with Cornhusker Highway. This “three way” intersection is also potentially unsafe in the long term and may require the 98<sup>th</sup> Street intersection to be realigned. It is possible that a majority of this realignment would be on the adjacent Novartis land, but this unknown at this time.

The Comprehensive Plan does not show any improvements in 98<sup>th</sup> Street or Alvo Road south of Cornhusker Highway.

### **PUBLIC SERVICE:**

Garner Industries will construct a pond along Cornhusker Highway for fire protection. The property is currently served by the Waverly Rural Fire District. Their station is located approximately 3 miles to the northeast in Waverly. The nearest Lincoln fire station is at 3640 Touzalin, approximately 3 miles to the southwest.

### **ENVIRONMENTAL CONCERNS:**

The proposed building is mostly in the 100 year floodplain. The proposed building would be elevated one foot above the flood level. Fill is required in order to elevate the proposed building on the site. The City of Lincoln receives credit through FEMA's Community Rating System program for floodplain areas within the City's Jurisdiction remaining in open space or agricultural land use.

Approval of the Comprehensive Plan Amendment to designate this area for industrial land use and the change of zone to I-2 was based in part upon a provision that the flood storage for this area would not be affected. While not a requirement of the zoning or subdivision ordinance at this time, considerable discussion has been given to “No Rise” or “No Loss of Flood Storage” as potential standards for development within the floodplain.

The floodplain area outside of the floodway on this site is chiefly backwater from the Stevens Creek overflow channel and acts primarily as a flood storage area rather than a conveyance area. Thus, “No Loss” of flood storage rather than “No Rise” in the 100-year flood elevation is the primary criteria. “No loss” of flood storage in the mapped and unmapped 100 year flood plain was a condition of understanding in the approval of the I-2 zoning. Currently the cut and fill calculations appear to reflect only the mapped flood plain and cause a loss of 10,750 cu. yds. of flood storage.

The applicant is proposing to re-route the tributary that drains through the center of this site to accommodate the proposed building. The tributary appears to have been historically modified for agricultural drainage purposes.

The applicant’s site plan proposes to restore or develop wetlands in the floodway. In addition the applicant is proposing to create wetland areas within the proposed realigned channel.

#### **AESTHETIC CONSIDERATIONS:**

The goals of the Comprehensive Plan on page 175 state: *“Protect and improve important vistas and entryways to the city.”* It will be very important that the industrial use not impact adjacent uses, nor the entryway into Lincoln. This site is not in any corridor currently proposed for design standards.

#### **ANALYSIS:**

1. This proposal is for an I-2 PUD of up to 150,000 square feet of building on a 22.83 acre portion of a 30 acre property.
2. A traffic study was provided that indicates very little impact on the road system.
3. Public Works memo for June 30, and July 19, 2000 notes:

The location is outside the City Limits and cannot be served by City sewer or water. A private well and private individual sanitary sewer treatment facility will be required.

The proposed street grading for 98<sup>th</sup> Street shows removal of 3' of cover from the existing 54" City water line. Lincoln Water System is concerned about the lack of cover over the water main. The design of the grade of the street and its relationship to the water main is subject to approval by the Department of Public Works and Utilities. This development must be required to pay the cost of reconstruction of the water main if required for construction of the required roadway improvements.

A drainage study and calculations must be submitted. No information is given concerning the offsite drainage to this site. A triple 8' x 4' box culvert is shown

beneath 98<sup>th</sup> Street draining to this site. The contours and grading plan show this culvert will not function. The street grade over the storm sewer is shown as elevation 1128.9. The proposed grade shown at the outlet of this pipe is shown as 1128. Either the contours are in error or a large amount of additional grading is needed on this site to make the culvert operate.

The paving of 98<sup>th</sup> Street must meet requirements of the County Engineer. Improvements to Cornhusker Highway need approval by the Nebraska Department of Roads. The grading and paving of 98<sup>th</sup> Street should be shown on the plan. Nothing is shown for the east ditch line of 98<sup>th</sup> Street. The County Engineer recommends, and Public Works concurs, that the grading be extended to the south limits of this development. The proposed street grade as a minimum must be extended to the south limits. The street grade shown impacts the water main when the pavement is extended beyond the point shown. The site distance available for the driveway at the 50 mile per hour design speed should be checked.

The Traffic Impact Study submitted to Public Works prior to this application is satisfactory.

4. County Engineers' letters of June 23 and July 6, 2000 indicate:

- 1) Any reconstruction of N. 98<sup>th</sup> Street must have County Board approval.
- 2) The grading of N. 98<sup>th</sup> Street shall include the entire roadway, including the east side and shall conform to the NBCS ROA-1 cross section.
- 3) At a minimum, negotiations should be made with Novartis for a Temporary Construction Easement to accommodate road construction along the east side of N. 98<sup>th</sup> Street,
- 4) N. 98<sup>th</sup> Street should be paved from Cornhusker Highway south to the entrance into the Garner Industries.
- 5) The profile of North 98<sup>th</sup> Street has incorrect grades and vertical curve length.
- 6) Grading of North 98<sup>th</sup> street shall extend to the south line of the development (Sta. 14+00) and shall be designed for 50 mph.
- 7) The Lincoln Water System shall review the grading of n. 98<sup>th</sup> Street in relation to the 54" water transmission line.
- 8) Flood plain calculations should be reviewed by the NRC and/or Building and Safety.

5. Lincoln/Lancaster County Health Department (LLCHD) notes that the well should be at least one foot above the 100 year flood plain. LLCHD strongly recommends “no loss of flood storage” in the 100 year flood plain. LLCHD recommends denial of the FPUD until flood plain issues are addressed. **[This application meets or exceeds current floodplain regulations]**
6. Parks and Recreation Department recommends the street tree requirement be waived. However, no street trees are required for a PUD, only a plat under the provisions of Title 26. Thus, no waiver is required. The Parks Department provided a bond amount of \$17,365 for elements of the landscaping.
7. The Nebraska Department of Natural Resources notes that the NAVD 88 100 year elevation should be 1133.3 as opposed to the shown 1132.9.
8. Building and Safety notes the finished floor elevation must be 1’ above the flood plain. 404 permits are required in areas of wetland disturbance. This application requires Flood Plain permits, N.O.I and NPDES permits.
9. The Lower Platte South NRD notes they do not favor floodplain development. No structure should be allowed that may impede water flow in the floodway. Pond #1 should not be considered flood storage as it will always be full of water and thus provides no additional volume of storage.

**STAFF CONCLUSION:**

The zoning is in place and the Planned Unit Development for this parcel provides the mechanism to have review and conditions for such issues as required street improvements, flood plain storage and entryway image/design review and landscaping.

**STAFF RECOMMENDATION:**

Conditional approval

**CONDITIONS:**

**Site Specific:**

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda: (NOTE: These documents and plans are required by ordinance or design standards.)
  - 1.1 Revise the site plan to:
    - 1.1.1 Remove the reference to a preliminary plat
    - 1.1.2 Add a legal description for the I-2 zoned area.

- 1.1.3 Revise the development area table to reflect the I-2 acreage of 22.83 acres and the floor area ratio of 15%.
- 1.1.4 Add the 100 year flood elevation to sheet #1
- 1.1.5 Show the "fire pond" on sheet #1
- 1.1.6 Dimension and tie the building envelope to lot lines
- 1.1.7 Label the setback/utility line around the perimeter.
- 1.1.8 Show the signs and correct note #13
- 1.1.9 Revise note #20 to add "except as modified by this permit".
- 1.1.10 Add building height.
- 1.1.11 Revise the header on sheet #2 to reflect a final planned unit development.
- 1.1.12 Provide a drainage study to the satisfaction of the Public Works Department.
- 1.1.13 Correct "preliminary" planting list on sheet #3.
- 1.1.14 Provide drainage study and calculations for sizing of the box culvert and correct the grade at the location of the culvert to the satisfaction of the County Engineer and Public Works.
- 1.1.15 Correct the grade and vertical curve of N. 98<sup>th</sup> Street and the clearance for the water main.
- 1.1.16 Correct the flood plain elevations.
- 1.1.17 Show the building floor elevations as 1' above the flood plain or flood proofed.
- ~~1.1.18 Recalculate the "flood storage" to delete the Fire Pond (#1) and to attain "no net loss of storage" in both the mapped and unmapped floodplains. (\*\*Per Planning Commission 08/09/00\*\*)~~
- 1.1.19 Correct the NAVD flood plain elevation shown.



2. This approval permits:
  - 2.1 A 150,000 square foot manufacturing building to be served by private water and sewer. Annexation will occur if public water or or sewer becomes available.
  - 2.2 A waiver to storm water detention.
  - 2.3 A waiver to the sidewalk requirements.

General:

3. Before receiving building permits:
  - 3.1 A permanent reproducible (mylar or tracing cloth) final site plan and 3 copies as approved by the City Council.
  - 3.2 The construction plans are to comply with the approved plans.
  - ~~3.3 Pave North 98<sup>th</sup> Street from Hwy 6 to the south entrance of the site and grade N. 98<sup>th</sup> street to the south limit of the parcel, to County Engineers Standards. All to a design speed of 50 MPH. (\*\*Per Planning Commission – moved to Condition #4.1, 08/09/00\*\*)~~
  - ~~3.4 The applicant has deeded or dedicated 50' of right-of- way along No. 98<sup>th</sup> St. and acquired or paid for easements required for the reconstruction of N 98<sup>th</sup> Street. (\*\*Per Planning Commission – moved to Condition #4.2, 08/09/00\*\*)~~
  - 3.5 The applicant has reconstructed at his cost the 54" water main, if required for the construction of the required road improvement.
  - 3.6 Receive a 404 permit for wetland disturbance and N.O.I., NPDES, and Flood Plain Permits.
  - 3.7 The applicant has posted a bond in the amount of \$17365.00 for the landscaping.

4. Before receiving occupancy permits:

- 4.1 Pave North 98<sup>th</sup> Street from Hwy 6 to the south entrance of the site and grade N. 98<sup>th</sup> street to the south limit of the parcel, to County Engineers Standards. All to a design speed of 50 MPH. (\*\*Per Planning Commission – moved from Condition #3.3, 08/09/00\*\*)
- 4.2 The applicant has deeded or dedicated 50' of right-of- way along No. 98<sup>th</sup> St. and acquired or paid for easements required for the reconstruction of N 98<sup>th</sup> Street. (\*\*Per Planning Commission – moved from Condition #3.4, 08/09/00\*\*)

STANDARD CONDITIONS:

45. The following conditions are applicable to all requests:

- 45.1 Before occupying the buildings all development and construction is to comply with the approved plans.
- 45.2 All privately-owned improvements, including landscaping and wetland areas, are to be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
- 45.3 The accompanying site plan shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

Prepared by:

Mike DeKalb, AICP  
Planner

# **CHANGE OF ZONE NO. 3268, GARNER INDUSTRIES FINAL PLANNED UNIT DEVELOPMENT**

## **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 9, 2000

Members present: Duvall, Schwinn, Newman, Carlson, Steward, Taylor, Krieser, Hunter and Bayer.

Planning staff recommendation: Conditional approval.

## **Proponents**

**1. Mark Hunzeker** appeared on behalf of **Garner Industries**. The applicant is in complete agreement with the conditions of approval, except the following:

Condition #1.1.18 refers to recalculation of "...the flood storage....to attain 'no net loss of storage' in both the mapped and unmapped floodplains." Hunzeker requested that this condition be deleted, and he believes staff is in agreement. Back when they were coming through with the preliminary PUD process, there was a lot of discussion about a lot of different issues, including that a substantial part of this site is in the floodplain. They had discussions with the NRD, FEMA, Planning, etc. By the time they got to the City Council, it was known that there would not be a complete no net loss of flood storage on this site. They will have a minor amount of fill. They had reached an agreement with staff that centered around approximately 20,000 cubic yards of fill and they are now at less than 10,000 with a goal to get lower. They are also in the process of taking material out of the floodplain to use for fill, creating a substantial area of wetland which will enhance water quality during storms of less than 100 year frequency in a way which at least mitigates the impact of the reduction in flood storage. The FEMA engineer indicated that this minor loss of flood storage was no big concern because it is so far downstream next to the creek.

Condition #1.1.14 requires a drainage study and calculations for sizing of the box culvert, etc. Hunzeker stated that he will not object to this condition being included but he will probably appeal it as this application goes to Council. The drainage study and calculations were provided prior to submission of this final PUD and apparently it got shuffled into something else in Public Works. Hunzeker does not know whether there has been adequate opportunity for Public Works to review it. He does not anticipate a problem, but he will appeal this condition.

Condition #1.1.15 deals with some county road standards. The applicant submitted grades according to city road standards within the 3-mile limit and discovered last week that the County Engineer believes they need to meet the county standards instead, which causes a considerable problem. It is not a physical problem but a problem of expense because there is a very large water line in that road. The applicant will be talking more with the County Engineer on this issue.

Conditions #3.3 and #3.4 relate to the paving of North 98th Street and dedication of right-of-way along North 98th Street prior to receiving building permits. The applicant has agreed to pave 98<sup>th</sup> Street and grade it, but at that time they thought they were dealing with City standards. This paving

will not be completed prior to receiving building permits. Therefore, Hunzeker requested that Conditions #3.3 and #3.4 be moved out of section 3 and a new section created for these two conditions to occur prior to receiving occupancy permits.

Hunzeker summarized that this applicant feels fortunate to have had excellent cooperation from all the city staff and there are some discussions with the County that they need to resolve before they get into construction.

There was no testimony in opposition.

#### Staff questions

Carlson inquired about the applicant's proposed amendments to the conditions of approval and whether there is agreement with the staff. Mike DeKalb of Planning staff did not object to the requested amendments. The staff would agree to tie Conditions #3.3 and #3.4 to occupancy permits. Relative to the floodplain, there has been ongoing discussion with staff and he believes they can work out any issues that come up.

Carlson wanted to know what would address the flood storage if Condition #1.1.18 is deleted as requested by the applicant. DeKalb agreed that the applicant did provide calculations and numbers which reflect about 12% loss of storage. The goal had been to shoot for zero--no net loss. However, he concurs that there was an understanding that that may not be possible. The current position of staff is that what is proposed is probably the best they can do.

Carlson inquired about the applicant's position on Conditions #1.1.14 and #1.1.15. DeKalb suggested that those conditions be left intact and the applicant can appeal as it moves forward. There will be continuing discussions between Public Works and the County Engineer in the meantime. There is sufficient time to accomplish this.

DeKalb clarified that the covenants which have been agreed upon and filed cover the flood storage issue.

Steward suggested that Condition #3.6 takes care of the continuing negotiation and the guarantee of satisfaction between staff and the applicant before the building permit. DeKalb concurred that all of those things will have to be done. We were trying to reach a higher standard and we just can't quite get there.

Hunter wanted to know what "the best we can do" means in terms of a rain storm like what happened on the south side of town a few years ago. Is other property going to be affected by this in that situation? Hunter believes we are compromising the standard that we set with the new ordinance. Dennis Bartels of Public Works advised that there was roughly 10% difference between the cut and the fill. This is in an area of backwater storage along Stevens Creek so as far as looking at one site at a time, the amount of storage lost is insignificant as far as the floodplain elevation on Stevens Creek. Looking at this site alone, the amount of the storage that is lost is insignificant. You probably would not be able to calculate the difference based on this one site.

Steward observed that the city has spent a great deal of time and effort evolving new floodplain standards, and we're saying we are going to compromise these one-by-one? Bartels concurred, adding that the city is working on legislation to account for it but at this point in time there is no regulation beyond the federal requirements. We are attempting to adopt legislation for no net rise in the floodplain. Bartels stated that what is proposed is an acceptable condition at this particular location because of the backwater effect. It is kind of a case by case basis as to where the fill might be located and the amount of the fill in the floodplain.

John Olsson, of Olsson Associates, advised that the applicant intended to provide zero flood storage, but there are some causes at this site that made that difficult to achieve, i.e. on-site wastewater treatment and drinking water. Because of the location, they cannot use city services for water and wastewater and must provide those services on-site. They are proposing an on-site wastewater system—leach field. This cannot be put in the floodplain. If they didn't have to do the on-site wastewater system, they could carve that area out to provide flood storage. There must be separation distances from the wastewater to the drinking water well. The drinking water well will be put up at the northern part of the site and must be elevated above the 100-year floodplain. Another reason is that they are trying to maintain some setback to the highway to be mindful of the entryway standards. They will be providing significant landscaping along Highway 6 to enhance the entryway to the city. A small pond in the front of the building will be used for fire protection.

Olsson suggested that they could put the building on stilts and store water underneath but that comes at an expense. They are trying to work with all the different constraints to come up with a solution that accommodates the needs of everyone as best possible.

Steward wondered at what point we say there are too many constraints and the engineer advises the client that this is inappropriate. Olsson stated that it depends on where you are at the site. This is at the very downstream portion of the Stevens Creek watershed. If it was in the floodway, that would be another situation. This is in backwater.

Dennis Bartels clarified that with this amount of fill, there is nothing in the existing floodplain zoning standards that would prohibit the amount of fill that is being proposed.

Bayer asked whether this application meets all of the rules that exist today, and Bartels believes that it does.

#### Response by the Applicant

Hunzeker pointed out that this application does meet all the existing requirements and actually goes well beyond. Part of the reason for the amount of fill is that they are preparing this site in anticipation of a doubling of the size of the original building. They are not just going in and putting in a building that they anticipate will be expanded. We've come in up front saying we need about a 75,000 sq. ft. structure today, but we want to provide for sufficient expansion room to double its size in the future.

He reiterated that the applicant will need to work out the street grading issues with the county.

Carlson wanted to know whether there are other options for the flood storage. Bartels was not aware of any options on the site where they could add more storage. There is a tributary running

through the property that runs into a wetland and it is real flat. You still have to keep the water flowing toward the west. He believes they are close to being out of options for increasing the storage short of retaining walls, etc. Water is flowing from the east under 98<sup>th</sup> Street into a relatively flat field which is as low as you can go. If you lowered it you would create a lake or pond which would be full of water when there was a storm. Carlson wants to keep the water from flowing too fast into the remaining channel. What are we trying to achieve by keeping the storage? Bartels stated that it would be difficult to achieve at this low end. It is right next to the floodway. Bartels does not think you could accomplish enough on the site without trying to store water east of 98<sup>th</sup> Street on someone else's property. There might be ways to accomplish it off-site but to keep the solution within the site the options are limited. In a backwater area you don't affect the elevation by filling it because a lot of it is caused by headwater effects or restrictions downstream such as a bridge or culvert. The storage effect is minimal in the true backwater situation. Carlson suggested then that you limit the ability of this area to accommodate overflow, so you are increasing the water flow somewhere. Carlson suggested that the only way to accommodate overflow is by digging deeper and raising the building to allow more area to accommodate that overflow. He just wants to make sure there is no other technique.

Bartels could see building a retaining wall in some of the areas where they have side slopes. That might gain a certain amount of storage area.

Hunter is concerned about the cumulative effect of additional development in the future. Isn't that basically what happened with Beal Slough? Wasn't that a cumulative effect of development? In general, Bartels agreed that to be correct. In his mind there is a certain fallacy to the floodway. It assumes you fill the designated floodplain and not cause more than 1' rise in the area designated as a floodway, but you want to keep development out. If you had total fill of all the flood fringe area you would eventually raise the floodway. That has been a nationwide fundamental.

Hunzeker approached the Commission stating that the applicant did spend a lot of time in staff meetings talking about the floodplain and how to deal with it and how to message this site in a way to best accommodate the goal, which was to reach no net loss of storage. This project far exceeds the existing standards. The way FEMA computes the elevation of the floodplain is that they assume that you can fill the entire floodplain and not raise the elevation of the flood at that location by more than a foot. They are not anywhere near a situation where they would be having an adverse impact on flood elevation because of the small size of this site and its location. It would be undesirable to slow down the runoff on this site because it is so close to the creek and the floodway. The theory of detaining or slowing down the flood water is that you reduce the peaks. If you are close to the stream you want to get it out of there right away.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 9, 2000

Duvall moved approval of the Planning staff recommendation of conditional approval, with amendment deleting Condition #1.1.18 and moving Conditions #3.3 and #3.4 to be done prior to occupancy permit, seconded by Krieser.

Carlson believes that in general this is a good place for this industry. But we have a public responsibility to make sure we are doing everything site appropriate that we can. His position goes both directions on the no net rise issue and maybe this is an impetus to investigate the floodplain standards. It looks like there was a point of understanding that they would do that in the beginning.

Newman voted in favor of the preliminary PUD and change of zone, but subject to protective covenants to the satisfaction of the city departments. The Health Department is still saying this is not the right thing to do. We are talking about pushing away the no net loss. She doesn't think it's right. If Garner is not right for this location, maybe we need to look at a smaller facility.

Steward stated that he will reluctantly support the motion because he does sincerely believe that they are within the letter of the regulations as they currently exist; however, this points out that the regulations we currently have are flawed. He does not believe we have a genuine and thorough enough set of restrictions for floodplain development for this community and the cumulative effect that this suggests is where we end up with a larger issue than one property at a time. He believes there are circumstances when site selection responsibility exists and one should draw the line. He believes this is the case in this situation but he does not believe the Commission is in a position to deny this application on the basis of the floodplain issues.

Carlson moved to amend to include Condition #1.1.18, seconded by Steward. Carlson wants to make it clear that it is an important condition to have at this point.

Hunter wants to know the reasons why they have no ability to accommodate the no net rise. Wouldn't it be better to allow exceptions on such things as setbacks and accommodate the more important long term issue, i.e. floodplain requirements? Isn't it more important to address another possible way of giving the go for this project? Maybe they need to move the building.

Motion to amend to include Condition #1.1.18 carried 5-4: Newman, Carlson, Steward, Taylor and Hunter voting 'yes'; Duvall, Schwinn, Krieser and Bayer voting 'no'.

Main motion, as amended to include Condition #1.1.18, carried 9-0: Newman, Carlson, Steward, Taylor, Hunter, Duvall, Schwinn, Krieser and Bayer voting 'yes'.

## **RECONSIDERATION OF CHANGE OF ZONE NO. 3268**

August 9, 2000

After a brief recess, Hunter made a motion to reconsider Change of Zone No. 3268, seconded by Duvall and carried 8-1: Duvall, Schwinn, Newman, Carlson, Taylor, Krieser, Hunter and Bayer voting 'yes'; Steward voting 'no'.

Duvall made a motion to approve the Planning staff recommendation of conditional approval, with amendment deleting Condition #1.1.18 and moving Conditions #3.3 and #3.4 to a section to be completed prior to occupancy permit, seconded by Schwinn.

Hunter explained that she made the motion to reconsider because she now has information to help her understand. The original proposal (the preliminary PUD and Change of Zone No. 3236) included a condition that there be no more than a certain amount of fill brought in, and that was acceptable at the time of the preliminary PUD and zone change. It was agreed at that time that the

project did in effect cause a rise on the property and the way the development is proposed was acceptable and does meet the current standards that we have for floodplain regulations.

Kathleen Sellman, Director of Planning, offered that the question is whether this project as submitted meets the requirements as established in the previous approval. The previous approval tied the applicant to a set of covenants that were developed subsequent to the public hearings on this project. The applicant has met those covenant requirements as well as meeting any adopted standards regarding floodplain.

Newman still has concerns because she reads that the Health Department recommends denial because half the building and 2/3 of the building envelopes are shown in the floodplain and it will result in a loss of flood storage.

Bayer noted that the Planning Department is recommending approval with the amendments being requested. Sellman concurred. She further stated that the Health Department is not the agency that determines compliance with floodplain regulations. But Newman believes the Health Department is responsible to clean up the result of properties built in the floodplain.

Carlson clarified with Sellman then that there is additional information other than what is in the staff report and he wants to know what that additional information would tell him. Sellman explained that the conditions of approval were intended to preserve the I-2 zoning and to limit development under the I-2 zoning. It was a plain I-2 that was previously approved. This request is to change the zoning from I-2 to I-2 PUD. During the period between the approval of the I-2 and today, a number of meetings between the applicant and his consultants and representatives and city staff occurred to discuss these issues. During the course of those meetings, the applicant provided information that clarified the situation on the site. During those meetings there was also agreement consistent with testimony that the applicant offered at the previous hearing, that there could be up to 20,000 cubic yards of fill that would be necessary on the site to develop it as proposed. They have now provided a more detailed development plan which indicates they can accomplish this development with approximately 10,000 cubic yards of fill. The covenants were intended to prevent development without having a PUD approved.

Carlson noted that the covenants were not a part of the packet presented to the Planning Commission. Sellman agreed that there is information that is not in the packet that would have been helpful. Carlson confirmed with Sellman that it is the Planning staff's professional opinion that what was agreed upon is satisfactory. Sellman stated that the restrictive covenants specifically outline what it is that will occur and what the final PUD must comply with. The covenants do address the specific conditions of any fill that would occur. Carlson wants to make it clear for the record that this is information that has an impact and which was not included in the staff report. Sellman believes those restrictive covenants would have been helpful and they should have been provided to the Commission in this deliberation.

Motion for conditional approval, deleting Condition #1.1.18, and renumbering Conditions #3.3 and #3.4 to be complied with prior to occupancy permit, carried 8-1: Duvall, Schwinn, Carlson, Steward, Taylor, Krieser, Hunter and Bayer voting 'yes'; Newman voting 'no'.



**COMPREHENSIVE PLAN AMENDMENT NO. 94-51  
TO CHANGE LAND FROM AGRICULTURAL TO INDUSTRIAL  
AND  
CHANGE OF ZONE NO. 3236  
FROM AG AGRICULTURAL TO I-2 INDUSTRIAL PARK**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 5, 2000

Members present: Schwinn, Taylor, Newman, Hunter, Duvall and Bayer; Hopkins, Steward and Krieser absent.

Planning staff recommendation: Approval of the Comprehensive Plan Amendment, and approval of the change of zone, subject to removal of the entire area of the floodway and revisions to the protective covenants to the satisfaction of Public Works, County Engineer, Planning and Health.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Garner Industries**. This project was begun back in August or September of 1999, when Phil Mullins, President of Garner Industries began discussing with staff the possibility of moving his business to this location. Currently, Garner is located at 48<sup>th</sup> & Superior Streets and has a second location on No. 57<sup>th</sup>, east of Hwy 77 and north of Cornhusker. They employ about 110 people, all of whom are highly skilled, involved in very detailed, fine tool and dye and injection molding manufacturing type work. They work for very high tech businesses. This is the kind of business that we need to encourage and keep in Lincoln. They are out of space. They need new facilities. In fact, the projects they currently have bids out on could require them to lease additional space while the new facility is under construction, if approved. Garner is very committed to northeast Lincoln. They have an employment base in northeast Lincoln and they want to stay in that part of the community.

The site proposed at 98<sup>th</sup> & Cornhusker Highway/Hwy 6 is not without its problems as set forth in the staff report. It has a portion of the property within the floodway. An additional portion is in the floodplain, but it is within an area which Hunzeker believes can be adequately addressed on floodplain issues and still have adequate site for the first 75,000 sq. ft. first phase building and for an expansion area that would double the size of the initial structure, while at the same time addressing the drainage coming across 98<sup>th</sup> from the east and providing adequate facilities for both potable water and fire flow in the form of a well on the site, a pond from which water could be pumped in the event of need for fire protection and various measures to be taken to mitigate the fill in the floodplain.

Hunzeker further advised that this applicant has had a lot of conversation with city staff. The property is not designated industrial on the land use plan in the Comprehensive Plan and it is not designated as part of the future urban area. There were initial discussions to the effect that they would like to have had city water service, but the staff's response was to get the property owners up and down Hwy 6 between 84<sup>th</sup> and 98<sup>th</sup> to agree to be annexed. That was done, but then there

were other problems that arose with respect to financing the extension of the water and sewer to this site and a variety of other issues that have brought us to this point.

The applicant has met with staff for six weeks; they have worked through a substantial number of issues to the credit of Kathleen Sellman and her staff, Steve Henrichsen, in particular. There has been a real effort to try and work out the problems associated with this site. Hence, the recommendation for approval.

Hunzeker agreed as part of that approval to enter into restrictive covenants with the city that will encompass, although not verbatim, the language contained in paragraphs 1 through 12 on p.181-182 of the staff report. Hunzeker agreed that the applicant will certainly encompass those concerns and will enter into those covenants prior to action by the City Council. The applicant will be submitting a Planned Unit Development (PUD) which will replace the I-2 zoning and the protective covenants so that there is a mechanism with the more ordinary restrictions that are enforced by the city. The PUD will have a substantial amount of additional graphic information that will show the details of the grading plan and some more refined versions of the elevations.

Hunzeker submitted some very preliminary elevations depicting a building of tilt-up concrete construction. The east elevation will have the office area of the building wrapping around to the north side of the building. The building does not have all the windows shown that will likely be there, but the design has not progressed to that point yet. He has been assured by the owner that there will be windows in the plant which will provide natural light and break up the facade of the building. In those areas where windows are not present, they will break up the facade with the forming of the tilt-up walls, etc. The model chosen by Mr. Mullins for the site plan and construction of the facility is the Novartis model that is just up the road. This will be a very attractive entryway type development for Lincoln and one that should be embraced and approved.

Hunzeker reiterated that they will have restrictive covenants agreed upon prior to action by the City Council which will encompass the twelve items set forth in the staff report, but they may not be verbatim.

### Opposition

**1. Ed Patterson**, 2108 Q Street, spoke at this time. For the better part of a decade, the corridor along Hwy 6 between Lincoln and Omaha can go in several different ways. It can be allowed to develop haphazardly by individual acreage plot developers with a dream home here and dream home there, or it could develop into a continuation of the theme of Novartis. He is encouraged to hear the applicant is intending to continue that theme along Hwy 6. This should be the theme all the way from Lincoln to Omaha and should be promoted. Planning could promote that theme with a corridor of suitable size between the private property owners and the government right-of-way to segregate buried electric power, easy access to fiberoptic communications, water, and so on.

Patterson's concern was whether the development is able to produce a zero net fill profile. The building is partially in the floodplain, so that would require fill. Is that many acre feet of volume being taken out in the area of the pond? He thinks the pond looks a little small.

### Staff questions

Schwinn asked staff to enlighten the Commission as to what will go on at the intersection of Fletcher & 98<sup>th</sup>. Steve Henrichsen of Planning staff stated that the city does not know what will be happening there at this moment. It will be addressed in the future. Dennis Bartels of Public Works advised that at this point, no plans have been developed. Public Works has asked for more site specific information and traffic information from the developer/builder to analyze the traffic. Due to the intersection at Alvo and 98<sup>th</sup> and Cornhusker being out of the future urban area, the city has not done any master planning of the streets. At a minimum, the City will expect paving from the driveway back to Cornhusker and will have to work through the traffic design issues in the next phase of this project. If 98<sup>th</sup> becomes an urban street, it will require a lot of changes that were not anticipated.

Hunter does not want to establish a precedent for future development outside the city limits. Are we creating a precedent here? Henrichsen stated that it is staff's opinion that the approval of this project will fill in one of the last portions on the south side of Cornhusker Hwy. As long as that zoning stays out of the floodway, this is basically the last portion. On the north side of Cornhusker Hwy, there is very little industrial, and the railroad tracks are on the north side of Cornhusker making access more problematic. The north is very different from the south side. Hunter asked whether the staff considers Cornhusker Hwy to be enough of a division that one side of the street is not going to reflect the opposite side of the street. Henrichsen suggested that the real factor is the double line of the railroad tracks on the north side of Cornhusker Hwy. The city would not want to encourage a lot of traffic heading across those tracks, and from an employer's point of view, you do not want to be on the north side of the tracks when there is not a lot of certainty about being able to cross that track.

### Response by the Applicant

Hunzeker responded to the concern about fill in the floodplain. This applicant is going to be taking a substantial amount of fill out of the area both within the floodway and in the floodplain. The area where they are changing slightly the course of drainage coming under 98<sup>th</sup> Street is going to be flattened out considerably. They will be creating wetlands in that area that is within the floodplain and also in most of the area that is in the floodway by virtue of flattening that area out and taking the grade down somewhat. They will not be taking every cubic yard of fill out of the floodplain or floodway. They will probably have a net fill of about 20,000 yards on this 30-acre site. They have agreed to continue to work with staff toward minimizing the amount of fill within the floodplain and floodway. They are continuing to work on manipulating the building. Part of the problem is a hill that will be taken down some and another hill that will probably have to come down, but they are very confident they can get down to 20,000 yards or less.

Public hearing was closed.

### **COMPREHENSIVE PLAN AMENDMENT NO. 94-51**

### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 5, 2000

Duvall moved approval, seconded by Taylor and carried 6-0: Schwinn, Taylor, Newman, Hunter, Duvall and Bayer voting 'yes'; Steward, Krieser and Hopkins absent.

**CHANGE OF ZONE NO. 3236**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 5, 2000

Duvall moved approval, subject to removal of the entire area of the floodway and protective covenants to the satisfaction of Public Works, County Engineer, Planning and Health, seconded by Taylor and carried 6-0: Schwinn, Taylor, Newman, Hunter, Duvall and Bayer voting 'yes'; Steward, Krieser and Hopkins absent.